

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION
(PCT Rule 66)

To:

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*REINHOLD EITLE
13.04.2004
REINHOLD EITLE*

Applicant's or agent's file reference 99 625 a/ubr		REPLY DUE	within 3 month(s) from the above date of mailing
International application No. PCT/EP 03/08067	International filing date (day/month/year) 23.07.2003	Priority date (day/month/year) 23.07.2002	
International Patent Classification (IPC) or both national classification and IPC A61B17/42			
Applicant SHERWOOD SERVICES AG et al.			

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I Basis of the opinion
 - II Priority
 - III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV Lack of unity of invention
 - V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI Certain documents cited
 - VII Certain defects in the international application
 - VIII Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 23.11.2004

Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Daintith, N Formalities officer (incl. extension of time limits) Schmidbauer, A Telephone No. +49 89 2399-8222
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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-20 as originally filed

Claims, Numbers

1-27 as originally filed

Drawings, Sheets

1/19-19/19 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

5. This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

WRITTEN OPINION

International application No. PCT/EP 03/08067

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N) Claims 1-4,10-17,27

Industrial applicability (IA) Claims

2. Citations and explanations

see separate sheet

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. The subject-matter of claim 1 is so broadly worded that it reads onto the prior art, see for example WO02/39890 (D1) which shows a surgical instrument with an arcuate portion having two different radii of curvature, see abstract and figure 1 or US-A-5 112 344 (D2), see abstract and figure 3. The subject-matter of claim 1 is not novel within the meaning of Article 33 (2) PCT.
2. The subject-matter of independent claim 27 is likewise not novel within the meaning of Article 33 (2) PCT over D1 and D2. The passage in claim 27 reading "the arcuate portion being dimensioned and curved whereby when in use and in position in the body the arcuate section extends from the skin over the obturator foramen, through the obturator foramen, to the vaginal wall" defines the instrument in terms of the result to be achieved and not in terms of physical features of the instrument. This definition does not fulfil the requirements of clarity of Article 6 PCT and hence this passage of the claim has not been taken into consideration for the question of novelty.
3. The subject-matter of dependent claims 2 to 4 and 10 to 17 is known from at least D2 and hence is also not novel within the meaning of Article 33 (2) PCT.
4. The subject-matter of claims 18 to 26 concerns general features of a stylet and a tape and would be obvious to the skilled man. Furthermore, the subject-matter of these claims is known from the combination of the teachings of D1 and D2 and hence no inventive step within the meaning of Article 33(3) PCT can be seen.
5. The features of claims 5 to 9 concerning the generally crooked shape of the arcuate portion does not appear to be known from nor rendered obvious by the prior art relating to non-invasive surgical instruments.